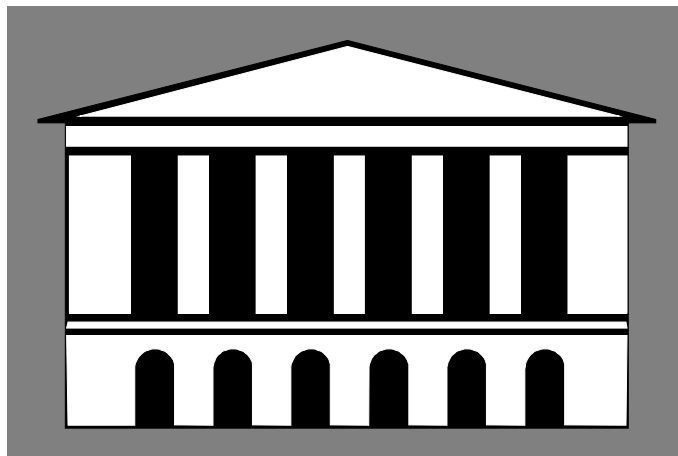


**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA**



**INFORMATION ON  
REPRESENTING YOURSELF  
IN A CIVIL ACTION**

**REVISED 3/22/2001**

## TABLE OF CONTENTS

GENERAL INFORMATION ABOUT THE COURT .....	<a href="#">1</a>
NOTICE TO PRO SE PARTIES .....	<a href="#">2</a>
NOTICE OF RIGHT TO CONSENT TO THE EXERCISE OF CIVIL JURISDICTION BY A MAGISTRATE JUDGE AND APPEAL OPTION .....	<a href="#">3</a>
INFORMATION ON FILING A CIVIL ACTION ON YOUR OWN BEHALF .....	<a href="#">4</a>
Legal Resources .....	<a href="#">4</a>
How to prepare a “complaint” .....	<a href="#">5</a>
Answering the Rule 26.01 Interrogatories .....	<a href="#">6</a>
How to prepare the “summons” .....	<a href="#">6</a>
The cost for filing a lawsuit .....	<a href="#">7</a>
How to “file” your lawsuit – in five steps .....	<a href="#">7</a>
What the court does .....	<a href="#">9</a>
Service .....	<a href="#">10</a>
What happens after service is effected .....	<a href="#">11</a>
Filing other documents .....	<a href="#">12</a>
Discovery .....	<a href="#">14</a>
IF YOU LOSE .....	<a href="#">15</a>
Appeals .....	<a href="#">15</a>
GLOSSARY .....	<a href="#">17</a>

## GENERAL INFORMATION ABOUT THE COURT

### BUSINESS HOURS:

The Clerk's Office is open to the public from 9:00 a.m. until 4:30 p.m., Monday through Friday, except for federal holidays.

### DIVISIONS:

Court is scheduled and filings are accepted at the following locations:

#### COLUMBIA

Strom Thurmond Courthouse  
1845 Assembly Street  
Columbia, SC 29201-2431

#### CHARLESTON

Hollings Judicial Center  
Meeting Street at Broad  
Charleston, SC 29401  
Post Office Box 835  
Charleston, SC 29402

#### FLORENCE

McMillan Federal Building  
401 West Evans Street  
Florence, SC 29501  
Post Office Box 2317  
Florence, SC 29503

#### GREENVILLE

Clement F. Haynsworth Federal Building  
300 East Washington Street  
Greenville, SC 29601  
Post Office Box 10768  
Greenville, SC 29603

Court is scheduled at the following locations, but filings are not accepted in these locations as they are not staffed: AIKEN, ANDERSON, BEAUFORT, SPARTANBURG.

Court is not held in the following locations and filings are not accepted there: GREENWOOD, ORANGEBURG, ROCK HILL.

## NOTICE TO PRO SE PARTIES<sup>1</sup>

YOU ARE NOT ENTITLED TO HAVE COUNSEL APPOINTED TO REPRESENT YOU IN A CIVIL ACTION. The Government of the United States does not appropriate funds for attorneys to represent parties in civil cases.<sup>2</sup> Also, the Clerk of Court does not have the authority to appoint counsel in civil cases, and court staff cannot recommend individual attorneys. Whenever a civil case is brought by a pro se party, the judges of this court outline proper procedure so that the pro se party will not be deprived of a fair opportunity to present his or her case.<sup>3</sup>

The South Carolina Bar has recognized that many people feel that legal services are not readily available to them, or need assistance finding legal counsel. To respond to these needs, the South Carolina Bar established a lawyer referral service.

Callers to this service are referred to lawyers who have indicated that they will handle a particular type of legal matter. These lawyers have also agreed to consult with referred clients for 30 minutes for a charge of no more than \$25.00.

If the lawsuit is important enough for you to invest your time in it, it may be worthwhile for you to consult a lawyer who is willing to handle your type of case. Additionally, given the fact that the fee for filing a lawsuit in this court is \$150.00, you may save money by consulting one of these attorneys before proceeding in this court (if time allows).

Nothing above should be read as intending to discourage or prohibit you from bringing a lawsuit on your own behalf without an attorney. You may even file a lawsuit on your own behalf and, at any time thereafter, choose to have a lawyer represent you. The Clerk of Court is obligated to file any lawsuit which is in the proper form and accompanied by the

---

<sup>1</sup> "Pro se" literally means, "For one's own behalf" – in this case, a person who does not retain a lawyer and appears for him/herself in court. A "party" is someone who is participating in the lawsuit, usually either the "plaintiff" or the "defendant." The Glossary at the end of this manual contains definitions of other commonly used terms.

<sup>2</sup> "Civil" cases are those that are not criminal.

<sup>3</sup> See Roseboro v. Garrison, 528 F.2d 309, 310 (4<sup>th</sup> Cir. 1975).

appropriate fee or in forma pauperis application,<sup>4</sup> regardless of whether the plaintiff is represented by a lawyer.

The South Carolina Bar Association Lawyer Referral Service can be contacted at:

950 Taylor Street  
Columbia, SC 29201  
1-800-868-2284

## NOTICE OF RIGHT TO CONSENT TO THE EXERCISE OF CIVIL JURISDICTION BY A MAGISTRATE JUDGE AND APPEAL OPTION<sup>5</sup>

In the District Court you have the option of having a United States Magistrate Judge conduct any or all proceedings in your civil case, including a jury or non-jury trial, through to the entry of a final judgment.

Upon filing your case in the District Court for South Carolina, it will be initially referred to a Magistrate Judge. However, your decision to consent, or not to consent, to the referral of your case to a United States Magistrate Judge for all proceedings is entirely voluntary. In addition, only if all the parties to the case consent to such reference to a Magistrate Judge will the reference occur.

An appeal from a judgment entered by a Magistrate Judge may be taken directly to the United States Court of Appeals for the Fourth Circuit in the same manner as an appeal from any other judgment of a district court.

LARRY W. PROPES  
CLERK

[The form for consenting to the Magistrate Judge conducting all proceedings in the case is enclosed in the packet entitled, "FORMS FOR FILING CASES PRO SE IN THE UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA." See FORM H.]

---

<sup>4</sup> See page 8 for more information.

<sup>5</sup> See Title 28, Chapter 43, Section 636 of the United States Code.

## INFORMATION ON FILING<sup>6</sup> A CIVIL ACTION ON YOUR OWN BEHALF

The following information is provided to give you some help with court procedures and requirements. An additional packet (FORMS FOR FILING CASES PRO SE IN THE UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA), with forms referred to herein, is available from the Clerk's Office and our website ([www.scd.uscourts.gov](http://www.scd.uscourts.gov)). Each case filed with the court is unique and must satisfy certain legal standards. You should not rely on this information to identify those standards. You should be especially mindful that there are certain time limits within which a lawsuit must be brought, or in which to answer lawsuits brought by others. Failure to observe those time limits will be harmful and may result in the case being decided against you. You are encouraged to seek the assistance of an attorney to ensure that your case is properly prepared and filed.

- ▶ These instructions are designed to help you understand basic court procedures in civil actions. COURT STAFF CANNOT GIVE YOU LEGAL ADVICE!
- ▶ These instructions do not cover all circumstances or all types of cases. It is your responsibility to comply with the Federal Rules of Civil Procedure (FRCP), the Local Rules of this District, and any statutes and rules that may apply to your particular case.

### Legal Resources

This manual contains references to both the FRCP and the Local Rules. These Rules govern the way civil actions proceed in the United States District Courts located in South Carolina. The FRCP are available for viewing (but not check-out) at the library of the University of South Carolina School of Law (located in Columbia), which is open to the public. The Clerk's Office also has a book of these Rules available for viewing at the Intake Section.

Both the FRCP and the Local Rules are available for viewing on the public access computer terminal in the Intake Section of the Clerk's Office. You may also view the FRCP from the court's website: [www.scd.uscourts.gov](http://www.scd.uscourts.gov). The Local Rules are also available for viewing at the court's website. In addition, there are internet sites devoted to providing legal material on-line.

---

<sup>6</sup> "Filing" is discussed on pages 8-10.

## How to prepare a "complaint"

The first step in filing a lawsuit is to prepare a "complaint." The person filing the complaint is the "plaintiff." The party whose actions are being complained about is the "defendant." The court has a form for filing a complaint, which is located in the packet entitled, "FORMS FOR FILING CASES PRO SE IN THE UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA" (the "Pro Se Forms"). The complaint form is FORM A. You are not required to use this form, but may find it helpful.

If you prepare your own complaint, it must be either legibly handwritten or typed, double-spaced. All pages should be 8-½ x 11. The first page should begin with the case "caption." The caption includes the name of the court, the names of all the parties,<sup>7</sup> and a space for the case number. (Court staff will fill in the case number once a number has been assigned.)

Sample caption for complaint:

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA	
David Smith,	Civil Action No. _____
Plaintiff,	
v.	
James Jones; Acme Products, Inc.,	
Defendants.	

The body of the complaint is made up of numbered paragraphs. Explain the facts of your claim,<sup>8</sup> the legal basis of your claim, why you believe this court has jurisdiction of your claim (i.e., why you brought the suit in this particular court), and what relief you want. It is not necessary to include case names or statute numbers.

---

<sup>7</sup> The use of "et al." is not acceptable in the caption of the complaint.

<sup>8</sup> The "claim," or "cause of action," is the set of facts upon which the party relies to ask the court for "relief." "Relief," or "remedy," is the assistance or benefit that the party seeks from the court.

At the end, sign and date the complaint. Underneath your signature, type or print your full name, address, phone number, and fax number (if you have one). This information must appear on every “pleading,”<sup>9</sup> “motion,”<sup>10</sup> or other paper you file with the court.

### Answering the Rule 26.01 Interrogatories

The information provided by the plaintiff on the Rule 26.01 Interrogatories is used in assigning cases to the district and magistrate judges. There is space provided on the form enclosed in the Pro Se Forms (FORM D) in which to answer these questions. If you do not use the form, you must repeat the questions and then place the answer to each question directly under that question. See Local Rules 26.01 and 26.02. The case caption should appear at the top, and the plaintiff’s signature and date signed should appear at the end.

### How to prepare the “summons”

Along with your complaint, you must submit a “summons” form for each defendant named in the complaint. There is a summons form included in the Pro Se Forms (FORM E); to obtain additional forms, you may either copy the form provided or contact the Clerk’s Office. Fill in the caption, leaving the case number blank. Where the form says, “YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF’S ATTORNEY (name and address),” you should write your name and address.<sup>11</sup>

The number of days a defendant will have to answer the complaint will vary depending on the type of claim and the defendant. The court will fill in the correct number of days the defendant has for filing an answer.

---

<sup>9</sup> “Pleadings” consist of the complaint, an “answer” (to the complaint); a “reply” (to a counterclaim); an answer to a cross-claim; a third-party (party other than the plaintiff or defendant) complaint; and a third-party answer. See FRCP Rule 7(a). The pleadings set forth the parties’ formal allegations of their respective claims and defenses.

<sup>10</sup> A “motion” is an application made to the judge, generally to obtain a ruling or an order directing something to be done.

<sup>11</sup> Although this form has two pages, you do not need to fill in the “Return of Service” until after service has been “effected.”



NOTE: THE TIME FOR FILING AN ANSWER RUNS FROM THE DATE THE COMPLAINT AND SUMMONS ARE SERVED,<sup>12</sup> NOT FROM THE DATE THE SUMMONS IS ISSUED.

### The cost for filing a lawsuit

The cost for filing a lawsuit is \$150.00 and must be paid when the complaint is filed. If paying by check or money order, the payee should be the "Clerk, United States District Court." The court cannot accept credit cards.

If you are unable to pay the filing fee, you may file an "Application to Proceed without Prepayment of Fees and Affidavit." This form is also referred to as an "Application to Proceed In Forma Pauperis"<sup>13</sup> or an "IFP Application." It is included in the Pro Se Forms (FORM C). If you file this Application with the complaint, you will not be required to pay the filing fee at that time. HOWEVER, IF THE COURT DENIES YOUR APPLICATION, YOU WILL BE REQUIRED TO PAY THE FILING FEE BEFORE BEING ALLOWED TO PROCEED WITH YOUR LAWSUIT.

When completing the form, it is very important that you truthfully answer all questions relating to your income, assets, and liabilities. If you fail to provide complete and accurate information, your request may be denied. If, during the course of the lawsuit, the court discovers the Application was not truthful, or if your financial condition changes, the court may withdraw the permission to proceed IFP and require payment.

### How to "file" your lawsuit – in five steps

#### 1) COMPLAINT

Provide the court with --

- the original complaint, and:
  - a copy for the court
  - a copy for each defendant named in the complaint
  - a copy for yourself, if you would like to have the court stamp the copy

---

<sup>12</sup> For an explanation of "service," see pages 11-12.

<sup>13</sup> "In forma pauperis" means literally, "in the character or manner of a pauper." It describes the permission given to a person unable to pay the filing fee to proceed without paying the costs or fees of the court.

If a defendant is either an agency of the United States, or an officer or an employee of the United States who is being sued for acts or omissions related to his/her employment, you must also provide the following:

- ▶ a copy for the United States Attorney General
- ▶ a copy for the United States Attorney in Columbia, South Carolina

EACH COPY MUST BE IDENTICAL TO THE ORIGINAL.

## 2) SUMMONS

Provide to the court a summons for each defendant named in the complaint.

If a defendant is either an agency of the United States, or an officer or an employee of the United States who is being sued for acts or omissions related to his/her employment, you must also provide a summons for:

- ▶ Attorney General of the United States  
5111 Main Justice Building  
10th Street & Constitution Avenue, NW  
Washington, D.C. 20530
- ▶ United States Attorney for the District of South Carolina  
1441 Main Street  
Suite 500  
Columbia, SC 29201

## 3) CIVIL COVER SHEET (see Pro Se Forms, FORM B).

This is simply an informational form used by the court when opening your case. Fill in as much information as you know and sign it.

## 4) ANSWERS TO RULE 26.01 INTERROGATORIES

## 5) PAYMENT OF THE FILING FEE OR THE IFP APPLICATION

PLEASE LET THE CLERK KNOW IF AN EMERGENCY SITUATION EXISTS WHEN YOU FILE A DOCUMENT.

If for any reason you need to file a document after regular office hours, a drop box has been placed at each of the courthouses in Columbia, Charleston, Florence, and Greenville. The drop boxes have marked thereon the words, "Clerk's office, U.S. District Court, Filing after 5:00 p.m. Only." Documents placed in a drop box will be considered to have been filed on that business day.

Documents can be filed in any division in the district that accepts filings. However, to expedite processing, please file your documents according to the following list:

<u>If your case arises out of an action that occurred in or near:</u>	<u>then file your case in:</u>
Aiken (Division 1)	Columbia
Anderson (Division 8)	Greenville
Beaufort (Division 9)	Charleston
Charleston (Division 2)	Charleston
Columbia (Division 3)	Columbia
Florence (Division 4)	Florence
Greenville (Division 6)	Greenville
Greenwood (Division 8)	Greenville
Orangeburg (Division 5)	Columbia
Rock Hill (Division 0)	Columbia
Spartanburg (Division 7)	Greenville

### What the court does

If you submit the appropriate number of copies of the necessary forms, a case will be "opened." Opening a case involves assigning a case number and a magistrate judge; entering basic information on the court's computerized docketing system; and making up a file folder. Once your complaint is assigned a case number, everything you receive from the court about your case will have the case number on it.

Once a case is opened, it is sent to the assigned magistrate judge for his/her review. Only after the magistrate judge has reviewed the case, determined that all the required forms have been submitted, and found the case to have a legal and factual basis, will the case be allowed to proceed and the summons(es) "issued." A plaintiff will usually hear from the court with regard to his/her case within a month after its filing.

Although you have the right of access to this court, you do not have the right to proceed on a "frivolous" claim. THE COURT HAS THE ABILITY,

AND THE DUTY, UNDER BOTH STATUTORY AND CASE LAW, TO DISMISS A CLAIM IT DEEMS TO BE FRIVOLOUS.<sup>14</sup>

### Service

“Service of Process” refers to the procedure of notifying a defendant that a lawsuit has been filed, what it is about, and the time for filing an answer. Service must be accomplished as specified in FRCP Rule 4 and Local Rule 4.01. A case cannot proceed against a defendant who has not been served!

Generally, service requires giving each defendant the summons issued by the court, a copy of the complaint, a copy of Rule 26.01 Answers, and copies of any motions filed along with the complaint. This is called “effecting” service.

If you pay the filing fee, you will be responsible for effecting service. The summons(es) will be returned to you, along with the copy(ies) of the complaint for the defendant(s). The two most common ways to effect service are (i) certified mail and (ii) personal delivery. Certified mail involves sending the defendant the required documents via certified mail, “Restricted Delivery – show to whom, date and address of delivery.”

Personal delivery involves directly giving the defendant the required documents. Service may be made by anyone who is at least 18 years old and not a party in the case. There are many private “process servers” who will serve legal papers for a fee. They are listed in the telephone book.

NOTE: If the defendant is a company that does business in this state, service should be made on the “registered agent” for the company. The registered agent is a person or company with a South Carolina address who is authorized to accept service on behalf of the company. You can find out if a company has a registered agent by contacting the office of the South Carolina Secretary of State, Division of Business Filings, (803) 734-2489.

FRCP Rule 4 requires certain parties to cooperate in saving costs of service of the summons and complaint. Thus, these documents can, in some

---

<sup>14</sup> Under 28 U.S.C. § 1915(e)(2)(B), a district court may dismiss a case brought IFP upon a finding that the action “fails to state a claim on which relief may be granted” or is “frivolous or malicious.” A finding of frivolity can be made where the complaint “lacks an arguable basis either in law or in fact.” Denton v. Hernandez, 504 U.S. 25, 31 (1992). Hence, under § 1915(e)(2)(B), a claim based on a meritless legal theory may be dismissed on motion of the court. Neitzke v. Williams, 490 U.S. 319 (1989); Allison v. Kyle, 66 F.3d 71 (5<sup>th</sup> Cir. 1995).

cases, be served via a "Waiver of Service of Summons." Service in this manner is accomplished by the plaintiff providing a defendant with a "Notice of Lawsuit and Request for Waiver"; two (2) copies of a "Waiver of Service of Summons" (for the defendant's response); and a copy of the complaint and the Rule 26.01 Answers. The Notice and Waiver forms can be found in the Pro Se Forms (FORM F and FORM G). If you send a defendant these forms, you must also include a self-addressed, stamped envelope (or other means of "cost-free" return).

Note: This method of service cannot be used with a person who is not "competent"<sup>15</sup> or who is an "infant."<sup>16</sup>

The defendant must return the executed Waiver of Service of Summons form to the plaintiff within thirty (30) days of the date the Notice of Lawsuit and Request for Waiver of Service was mailed to the defendant. The defendant's answer is due sixty (60) days from the date the plaintiff mailed the Waiver. (The deadlines are calculated from the date of mailing, not from the date of receipt.)

The person who effects service must file with the court a "return of service." This is a statement made under oath that service was effected, and explaining when service was made and by what method.

If you file an IFP Application and the court grants it, the court will arrange for the United States Marshals Service to effect service for you. You will be sent the proper forms (USM-285), which you will need to fill out for each defendant. Only one defendant's name should appear on each form. You must provide the particular defendant's complete address on each individual form. The "TYPE OF PROCESS" is "Civil." You should write your name and address where the form says, "SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW". The providing of sufficient, accurate, and complete information on the Forms USM-285 is YOUR responsibility!

Ⓢ IF SERVICE IS NOT EFFECTED WITHIN 120 DAYS FROM THE DATE THE COMPLAINT IS FILED, THE CASE MAY BE DISMISSED.

### What happens after service is effected

Once a defendant is served, several things may happen. The defendant may file an answer, file a motion or, perhaps, do nothing. If a defendant files an answer, the judge will issue a scheduling order. A scheduling order

---

<sup>15</sup> A person is "competent" when he/she is of legal age and without mental disability or incapacity.

<sup>16</sup> An "infant" is a person who is a minor.

sets deadlines for doing or filing certain things in the case. It may include deadlines for completing discovery,<sup>17</sup> filing motions, and/or filing status reports.

There are a number of different motions which may be filed before an answer is filed. If the motion is a routine request for an extension of time in which to answer, it will most likely be granted unless you promptly file an opposition, giving a good reason why it should not be granted. For other, more involved motions, unless directed otherwise, you will be allowed more time to file a response.

If a defendant does not file something within the time for filing a response, you may ask the court to enter a default judgment under FRCP Rule 55.

**Ⓢ IF YOU HAVE A CHANGE OF ADDRESS WHILE YOUR CASE IS PENDING, YOU MUST SO NOTIFY THE COURT AND ALL PARTIES IN WRITING. FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE!**

### Filing other documents

Everything you send to the court (other than your initial documents) should have the case number on it. You may use a shortened version of the case caption on everything other than the complaint. The shortened version includes the name of the first plaintiff, the name of the first defendant, and, of course, the case number.

If you are filing a motion or memorandum (other than those that relate to discovery), you must file the original and a copy with the court. Do not file any motions or memoranda that are longer than 35 pages unless you receive special permission from the court; most motions and memoranda should be considerably shorter. You must sign every pleading, motion and memorandum that you file.

At no time should any communication about or filing in your case be sent directly to a judge. If you want to ask the court to do something, you must file a motion. All pleadings and motions should be filed with the Clerk of Court and a copy should be mailed to each attorney representing a defendant, or directly to a defendant if he/she does not have an attorney.

There are certain matters about which you should try to reach an agreement with the opposing party before asking the court to issue an order. If you want an extension of time in which to file something or are

---

<sup>17</sup> "Discovery" refers to the process of obtaining facts and information about the case from the other party in order to prepare for trial. See pages 15-16; FRCP Rules 26-37; Local Rules 26.01-37.02.

having a disagreement about discovery, try to speak first with counsel for the other party before filing a motion.

All documents must be on 8-½" by 11" paper, double-spaced. It is acceptable to use "et al." in all documents except the complaint. The documents should be titled, e.g., "Answer"; "Motion." Any affidavits (sworn statements) should be separate from any other document and, in addition to the caption, should include the name of the person swearing to the affidavit.

You must include a certificate of service<sup>18</sup> on everything you file (after your complaint) showing when you mailed copies and to whom they were sent. The certificate of service appears at the end of the pleading or motion. You do not need to state in the certificate of service that copies were sent to the Clerk of Court.

Sample Certificate of Service:

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA	
David Smith,	C/A No. 0:01-000-12AB
Plaintiff,	
v.	
James Jones, et al.,	
Defendants.	
<u>Certificate of Service</u>	
I hereby certify that on this 1 <sup>st</sup> day of June, 2002, a copy of the foregoing Motion was mailed, postage prepaid, to Samuel Barrister, Esquire, 100 West Main Street, Columbia, South Carolina 29201, counsel for Defendant James Jones.	
_____ [signature] _____	

---

<sup>18</sup> See FRCP Rule 5.

## Discovery

Discovery is the process of obtaining information and evidence relevant to your case.<sup>19</sup> A scheduling order may contain a deadline for the completion of discovery. There are many different ways to obtain discovery. The most common are: interrogatories (written questions), requests for production of documents, and depositions.<sup>20</sup> Most discovery requests are directed to the parties in the case, although under certain circumstances, discovery can be obtained from non-parties. Conduct of discovery is governed by FRCP Rules 26-37 and Local Rules 26.01-37.02.

When conducting discovery, be sure to make your requests promptly so that the party responding has sufficient time before the discovery deadline to answer or object. It is also important to respond to any discovery requests you receive by the deadline indicated unless the other party agrees, in writing, that you may have additional time. See Local Rules 29.01 and 37.01.

Ⓜ A party who does not respond to a discovery request may be subject to sanctions, which may include dismissal of your action if you are the plaintiff, or a judgment against you if you are the defendant.

Do not send copies of discovery requests or responses to the court for filing or for information unless: (i) you are directed by the court to do so, or (ii) you are filing the discovery document in support of or in opposition to a motion. See Local Rules 5.01 and 7.04. Send a copy of the request to the party expected to respond and keep the original. Send the original of any responses you provide to the party requesting discovery and keep a copy for your records.

---

<sup>19</sup> There are some types of cases (social security appeals, for example) in which discovery does not occur.

<sup>20</sup> During a deposition, one party (if represented by a lawyer, through his/her/its lawyer) asks oral questions of the other party or of his/her/its witness. This testimony is given under oath and reduced to writing (a "transcript") in preparation for trial. The deposition is not taken in open court, but usually in a lawyer's office. The person who is deposed is called the "deponent."



Subpoenas:<sup>21</sup>

THE CLERK OF COURT CANNOT GIVE PRO SE PARTIES BLANK SUBPOENAS. If you want the court to issue subpoenas, you must submit a motion explaining who you want to subpoena and why. Please file the motion at least two weeks before you will need the subpoenas. You will need to have the subpoena served in accordance with FRCP Rule 45. Expenses related to the subpoena, such as witness fees, mileage costs and copying costs, are to be paid by the person requesting the subpoena. See FRCP Rule 45.

### IF YOU LOSE!

BEFORE filing a lawsuit, you should consider the possible consequences of losing. Under some circumstances, the winning party may ask the court to order you to pay his/her/its attorneys' fees. The winning party is also entitled to seek certain costs that it incurs during the lawsuit, such as witness fees, copying costs, and the costs of deposition transcripts. In some cases, these costs can easily add up to thousands of dollars. It is common for a winning party to seek its costs from the losing party.

### Appeals

You may appeal a final decision of this court to the United States Court of Appeals for the Fourth Circuit. See Federal Rule of Appellate Procedure 4 for applicable time limits. The filing fee for an appeal is \$105.00. If you cannot afford to pay the fee, you may file a motion for leave to proceed in forma pauperis on appeal. To file an appeal, you must file with the Clerk of this court a notice of appeal, along with one copy for the court and an additional copy for each attorney or other pro se party in the case. You must also submit to this court either the filing fee or a motion for leave to proceed IFP. A form notice of appeal is available from the Clerk, but a sample is set forth below.

---

<sup>21</sup> A subpoena is a command to appear at a certain time and place to give testimony upon a certain matter. A subpoena duces tecum requires production of books, papers and other things.

Sample Notice of Appeal:

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

David Smith,

C/A No. 0:01-000-12AB

Plaintiff,

v.

James Jones, et al.,

Defendants.

Notice of Appeal

Notice is hereby given that the plaintiff in the above-captioned case hereby appeals to the United States Court of Appeals for the Fourth Circuit from the Judgment entered in this action of the 15<sup>th</sup> day of December, 2002.

[signature]

David Smith  
123 Lolly Lane  
Columbia, SC 29203  
(803) 555-6789

## GLOSSARY

Affidavit: a sworn statement.

Answer: the response to the complaint.

Caption: appears on the top of the first page of any document submitted to the court. On the complaint, includes the name of the court, the names of all the parties, and a space for the case number. For documents other than the complaint, a shortened version can be used that includes the name of the first plaintiff, the name of the first defendant, and the case number.

Civil case: a case that is not criminal.

Cause of action: the set of facts upon which the party relies to ask the court for "relief." See also claim.

Certificate of service: statement filed with the court showing when you mailed copies of a document and to whom the copies were sent. The certificate of service appears at the end of the pleading or motion.

Claim: the set of facts upon which the party relies to ask the court for relief. See also cause of action.

Competent: as to a party, when he/she is of legal age and without mental disability or incapacity.

Defendant: the party whose actions are being complained about in the complaint by the plaintiff.

Deponent: the person who is deposed. See deposition below.

Deposition: where one party (if represented by a lawyer, through his/her/its lawyer) asks oral questions of the other party or of his/her/its witness. This testimony is given under oath and reduced to writing in preparation for trial. The deposition is not taken in open court, but usually in a lawyer's office.

Discovery: the process of obtaining facts and information about the case from the other party in order to prepare for trial.

Effect: as to service, providing the party(ies) to the case with copies of documents.

Et al.: "and others."

File: describes the process necessary to begin the case in the court. Also refers to the process of submitting a document to the court.

Frivolous: as to a lawsuit, lacking a factual and/or a legal basis.

In forma pauperis: literally, “in the character or manner of a pauper.”  
Describes the permission given to a person to proceed without paying the costs or fees of the court.

Infant: a person who is a legal minor.

Interrogatories: written questions directed towards a party, usually as part of discovery.

Motion: an application made to the judge, generally to obtain a ruling or an order directing something to be done.

Party: someone who is participating in the lawsuit, usually either the plaintiff or the defendant.

Plaintiff: the person filing the complaint.

Pleadings: documents that consist of the complaint, answer; reply; answer to a cross-claim; third-party complaint; and third-party answer. See FRCP Rule 7(a). The pleadings set forth the parties’ formal allegations of their respective claims and defenses.

Pro se: “For one’s own behalf”; a person who does not retain a lawyer and appears for him/herself in court.

Process servers: individuals who serve legal papers for a fee.

Registered agent: a person or company with a South Carolina address who is authorized to accept service on behalf of a company.

Relief: the assistance or benefit that the party seeks from the court. See also remedy.

Remedy: the assistance or benefit that the party seeks from the court. See also relief.

Reply: response to a counterclaim.

Return of Service: a statement made under oath and filed with the court that service of the complaint was effected, and explaining when service was made and by what method.

Scheduling order: document issued by the judge that sets deadlines for doing or filing certain things in the case. It may include deadlines for completing discovery, filing motions, and/or filing status reports.

Serve: to provide the other party(ies) with a copy of a document that has been filed. Each document filed with the court must be served on the other party(ies).

Service or Service of Process: as to the complaint, the procedure of notifying a defendant that a lawsuit has been filed, what it is about, and the time for filing an answer.

Summons: form issued by the court and served by the plaintiff to inform the defendant that a case has been brought against the defendant.

Subpoena: a command to appear at a certain time and place to give testimony upon a certain matter.

Subpoena duces tecum: requires production of books, papers and other things.

Third-party: a party to the case other than the plaintiff or defendant.

Transcript: where sworn testimony is reduced to writing.